



# Iowa General Assembly

## 2010 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### FREE SPEECH AND VIEWPOINT DISCRIMINATION

Filed by the United States Supreme Court

June 28, 2010

Christian Legal Society v. Martinez

No. 08-1371

<http://www.supremecourt.gov/opinions/09pdf/08-1371.pdf>

**Background.** This case involves the issue of a public university denying official, school-approved status to a student group because of the group's viewpoints. In separate cases in 1972, 1981, and 1995, the United States Supreme Court (Court) ruled that a student political group and two student religious organizations had been unconstitutionally singled out because of the groups' viewpoints. All three cases relied on the principle that a state cannot exclude speech where its distinction is not reasonable in light of the purpose served by the forum nor may it discriminate on the basis of viewpoint.

In this case, the Court considered a challenge to Hastings University's rejection of a student religious group, named Christian Legal Society (CLS), that had applied for school-approved status. The Court upheld a lower court ruling that the public university *could* lawfully refuse the group's application for school-approved status. The 5-4 majority opinion held that, because the group requires its voting members, as a precondition, to sign a statement of faith to conduct their lives in accordance with certain prescribed Christian faith principles concerning religion, sexual orientation, and sexual behavior, this statement of faith requirement was in direct conflict with the law school's "all-comers" policy prohibiting discrimination on the basis of race, color, religion, national origin, ancestry, disability, age, sex, or sexual orientation, which the university requires all student organizations to agree to abide by as a precondition to achieving school-approved status. The university interprets this nondiscrimination policy to require all school-approved groups to offer all students the opportunity to participate, become a member, or seek leadership positions in the organization, regardless of status or beliefs.

In holding that a public university may require its student organizations to allow any student to join as a voting member or officer regardless of whether the student openly disagrees with the group's fundamental belief based on this type of "all-comers" nondiscrimination policy, the Court stated, "It is...hard to imagine a more viewpoint-neutral policy than one requiring *all* student groups to accept all comers." The Court drew a distinction between previous cases before the Court in which universities singled out organizations for disfavored treatment because of their points of view. Hastings' all-comers requirement draws no distinction between groups based on their message or perspective and is textbook viewpoint neutral. In addition, the Court noted that Hastings' policy is all the more creditworthy in light of the "substantial alternative channels that remain open for [CLS-student] communication to take place" and thus CLS could still maintain a presence on campus without official school affiliation. The Court thus rejected the group's claim that the university's refusal to grant the group school-approved status amounted to viewpoint discrimination and was a violation of the group's rights to free speech, expressive association, and free exercise of religion under the First and Fourteenth Amendments. The Court remanded the case to the lower court (9th Circuit) to address the CLS argument, if preserved for review, that the law school's all-comers policy was a mere pretext and that the real basis of the decision was religious discrimination.

**Dissent.** In a strongly worded dissent, Justice Alito disagreed with the majority, stating that the "Court's treatment of this case is deeply disappointing...ignoring strong evidence that the accept-all-comers policy is not viewpoint neutral because it was announced as a pretext to justify viewpoint discrimination."

**Impact and Applicability.** The Court reaffirmed the principle that a state cannot exclude speech where its distinction is

not reasonable in light of the purpose served by the forum nor may it discriminate on the basis of viewpoint. Citing earlier precedent, the Court noted that a public university may not restrict speech or association “simply because it finds the views expressed by [a] group to be abhorrent.”

Legislative initiatives, both at the national and state levels, relating to free speech have included but are not limited to legislation regarding restraints on student activity fees and issue advocacy, student publications and other forms of campus speech, alternative coursework, and academic bills of rights and intellectual diversity. This opinion identifies principles to consider in developing such initiatives.

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